

MULTI-FAMILY ASSISTANCE PROGRAM FOR HURRICANE IKE DISASTER RECOVERY

The City of Houston (City) Housing and Community Development Department (HCDD) has designed the Hurricane Ike Disaster Recovery (DR) Multifamily Assistance Program (Multifamily) to provide funds for rehabilitation, reconstruction, and/or new construction of affordable multi-family rental housing projects in areas impacted by Hurricane Ike, which made landfall on September 13, 2008. Funding will be available through the Community Development Block Grant (CDBG) Disaster Recovery Program (CDBG-DR). The Texas Department of Rural Affairs (TDRA) was designated as the overall coordinator of Housing and Urban Development's (HUD) CDBG-DR. TDRA uses the Texas Department of Housing and Community Affairs (TDHCA) to oversee the housing aspects of CDBG-DR in Texas.

Program Specifications

1. Purpose of the Program:

Facilitate the rehabilitation, reconstruction, and/or new construction of multi-family rental housing needs of approximately 2,552 multi-family housing units located within the jurisdictional limits of the City in areas impacted by Hurricane Ike. Upon completion, a minimum of 51% of the units will be restricted for five years to low- to moderate-income individuals earning 80% or less of the Area Median Family Income (AMFI). The rents must comply with the High Home Investment Partnership (HOME) Rents unless the property is under an existing Land Use Restriction Agreement (LURA). HOME rent limits are defined by HUD and must equal the lesser of fair market rents or 30% of the adjusted income for people earning 65% of the AMFI (<http://www.tdhca.state.tx.us/pmcomp/irl.htm>).

2. Types and Amounts of Assistance

The City will provide, on average, \$20,000 per unit in CDBG-DR Hurricane Ike proceeds for rehab projects. Exact costs per unit will depend upon the amount of damage sustained by Hurricane Ike, the cost reasonableness of repair, bringing the property up to Housing Quality Standards (HQS), and other funding sources available. New construction will be considered on a one for one replacement of damaged or destroyed units located within the City. Eligible costs include hard costs for construction and other permissible costs under 24 CFR 570, Subpart I, which involve rehabilitation, reconstruction, or new construction of multifamily rental housing. City funds may not be used to pay for damages covered by any FEMA reimbursement, SBA assistance, insurance claim, or any insurance policy including delayed or future payments anticipated under insurance policies. The CDBG-DR funds will be in the form of a 0% performance-based loan and will be forgiven when all contractual obligations have been met, including satisfactory completion of construction and compliance with the five-year affordability period. Any Lender must agree to subordinate to the City's LURA. The Developer / Borrower will guarantee completion of construction until a certificate of occupancy has been issued and retainage has been released. Upon completion and stabilization of the project, all operating cash flow from the property in excess of 1.50x debt service coverage (DSC) will be reserved by Borrower and must be used for project related expenses. The terms of the loan / grant may be modified by the City, if necessary, given other requirements from other financial programs (*i.e.* tax credit programs, etc.). The project must be completed within 18 months of the contract, unless otherwise extended.

3. Program marketing procedures

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Requests for funding are submitted to HCDD in several ways including Request for Proposals (RFP), responses to Consolidated Plan Hearings; and unsolicited proposals for funding. Projects that are multi-family in nature are assigned to the Commercial Group. An RFP was published from December 15, 2008 to May 1, 2009 which included requests for application for multi-family housing units under the *Apartments to Standard* and Hurricane Ike recovery programs (<http://www.houstontx.gov/housing/rfp.html>).

4. Application Process – Property Eligibility

Projects are evaluated according to the then-current policy priorities of the Mayor and City Council of the City of Houston, under the direction of the HCDD Director. Projects bounded by Highway 290 to Beltway 8 to Interstate 45 to Highway 288 to Beltway 8 to Interstate 45 suffered substantial Hurricane Ike damage. HCDD has targeted two areas particularly hard hit by Hurricane Ike: the Fondren / Southwest and Antoine / DeSoto Target Zones. Assistance may be concentrated in these areas, but will apply to any project to expand its *Apartments to Standard* program as they have suffered damage as a result of Hurricane Ike. Projects selected for inclusion will typically be in the 10-30 year old range, suffered hurricane damage, and will have their useful lives extended by 20 years. Developer / Borrower will not be eligible to receive funding if Developer / Borrower's total related party loans from the HCDD portfolio would exceed 10% of the total outstanding portfolio of HCDD. Each Developer / Borrower is restricted to one award per year. Other selection criteria were identified in the RFP (<http://www.houstontx.gov/housing/rfp.html>). A letter of support is required from the district City Council Member in which the property is located. Civic club, Super Neighborhood Council, and at-large Council Member letters are encouraged but not required. Eligible projects should contain a minimum of 64 units. *No part of the improvements on the property may be located within the 100-year flood plain as identified on the most current Federal Emergency Management Agency (FEMA) Flood Maps.*

5. Participant Eligibility Requirements

For-profit and not-for-profit Developers/ Borrowers, acting individually or as participants in a limited partnership [LP] or limited liability corporation [LLC] are eligible to participate. Not-for-profit entities must provide evidence of IRS tax-exempt status. Developer / Borrower must be in good standing with HCDD on all previous loans or loan commitments. There may be no defaults or negative collection actions. No Developer / Borrower or General Contractor may be "debarred" from the federal and state debarment lists, in accordance with 24 CFR §570.609, as well as other applicable laws. Developer / Borrowers must provide a complete listing with addresses of multifamily properties currently owned or managed.

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6. Initial Procedures for Intake

Upon receipt of an application for funding, the property will go through environmental review, initial eligibility determination, and debarment search. The items submitted for review can be found in the attached Affordable Rental Housing (ARH) Application Checklist (<http://www.houstontx.gov/housing/rfp.html>). The project will also be reviewed in terms of financial feasibility with the objective to repair existing hurricane damage and bring the property up to standard to achieve a 20 year useful life. The Developer / Borrower must submit a Property Condition Assessment (PCA) acceptable to the City and a sources and uses of funds identifying the proposed expenses of the project. In addition to repair costs identified in the PCA, other costs will be considered if they extend the useful life of the project. The project costs must be reasonable and typical in the current marketplace for projects of similar scope.

7. Underwriting

The proposed projects will go through underwriting which will review the ownership structure, property operations, the sources and uses of funds, and the financial statements of the owner and guarantor (if applicable). Under the CDBG-DR program, 51% of the units will be restricted at High HOME Rents or other affordable rents if the property is currently restricted by an existing LURA. This restricted term will be five years from completion. HCDD will review the underlying debt and operating expenses of the property to determine if the project is feasible during the affordability period and demonstrates income adequate to cover operating expenses and applicable debt service. The sources and uses will be reviewed to determine the adequacy of the funding to complete the project in conjunction with the PCA. The scope of work including the repair of any hurricane damage will be assessed. Following underwriting, a contract will be executed between the developer and the City. This contract will specify the terms under which the City will provide funding to the project; the number of units to be renovated / developed; the affordability period; and other conditions of the agreement.

8. Third Party Reports

As part of the application the Developer / Borrower must provide a Phase I Environmental Report, an Appraisal, and a PCA. The borrower will be required to submit a Phase I performed by a qualified environmental services firm. The environmental officer at HCDD will review the report prior to federal funds being committed in accordance with 24 CFR Parts 58. No commitment or disbursement of funds will occur prior to the completion of this review. The environmental assessment reviews the wetlands, coastal zones, flood zones and runway clear zones. The CDBG-DR Hurricane Ike Program will not assist multi-family communities that have been determined to be in the floodway or runway clear zones. Consideration will be given to applications that indicate that the structures in the floodway will be removed. Once the Environmental Review is complete the review is forwarded to TDHCA for environmental clearance. The Developer / Borrower must comply with all applicable laws with respect to lead based paint in conjunction with Section 302 of the Lead Based Paint Poisoning Prevent Action (42 USC Section 4831(b)), as well as the presence of asbestos containing materials within the project. The PCA must conform to American Society for Testing and Materials (ASTM - <http://www.astm.org/>) "2018 Standard Guidelines for Property Condition Assessments." The Developer / Borrower is also directed to the TDHCA Section 1.36 of the 2009 REA Rules for PCA guidance (<http://www.tdhca.state.tx.us/readocs/10-REARules.pdf>).

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9. Construction

Appropriate representatives of HCDD will meet with the Borrower and his or her representative to review City and Federal requirements for contracts using City Funds. The following points will be covered at a minimum: Labor Standards; Section 3 Plan; Minority / Business Enterprise (MBE); Small Business Enterprise (SBE) requirements; Affirmative Marketing; and Contractor Clearance. The project costs must be “reasonable and customary” as determined by an independent third party report acceptable to HCDD or considered reasonable as documented by a bidding process. The owner will be required to guarantee completion of the project. The Developer / Borrower will be required to provide an “as built survey” as well as the specifications on the project describing the proposed scope of work for rehabilitation, reconstruction, and /or new construction. All contracts will be bonded for payment and performance. The Director of HCDD may waive any one or more of the contract requirements in his/her discretion for good cause, as long as it is within the limits of state and federal law and meets the objectives of the program. Projects are subject to The Davis-Bacon Wage Act, if applicable (40 USC 276a-276-a5, 24 CFR Part 70), and should budget accordingly. Prior to commencement of construction, the Developer / Borrower must have a notice to proceed issued by HCDD.

The owner will be required to provide monthly inspection reports from a third party firm acceptable to HCDD reviewing the construction progress in accordance with the project budget and scope of work. The report will be required prior to funding each monthly draw request. HCDD will retain 10% of each draw until satisfactory completion of the project.

Upon completion the rehabilitated, reconstructed, or newly constructed project must comply with local building, health and safety codes and standards, and the entire structure must comply with housing quality standards (HQS). All newly constructed including reconstructed housing units must meet the current edition of the Model Energy Code (MEC) (<http://www.energycodes.gov/implement/pdfs/modelcode.pdf>) published by the Council of American Building Officials and must meet the accessibility requirements at 24 CFR Part 8, which implements Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. §794 et seq.) ordinances. Multifamily housing developments must meet the design and construction requirements at the Texas Administrative Code, Title 10, Chapter 60, Subchapter (B) Rules §60.201-211. Covered multifamily dwellings as defined at 24 CFR §100.201, as well as common use facilities in developments with covered dwelling, must meet the design and construction requirements at 24 CFR §100.205, which implement the Fair Housing Act (42 U.S.C. §§3601-3619). All deficiencies must be addressed prior to releasing retainage.

10. Labor Standards

The Labor Standards Officer for HCDD will ensure compliance with all applicable labor standards, including, but not limited to Davis-Bacon wages, Section 3, Minority / Business Enterprise, and Small Business Enterprise. Under the federal Davis-Bacon Wage Act (40 USC 276a-276-a5, 24 CFR Part 70, 24 CFR §570.603), prevailing wages must be paid on all construction and related work on projects that have eight or more (8) CDBG-DR assisted units, where applicable.

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The HCDD Labor Standards Officer will provide the following information on all applicable projects to the TDHCA Labor Standards Specialist:

- Notes of bid and preconstruction conferences as well as attendance rosters with attendees signatures.
- Notice to Proceed.
- All Department of Labor (DOL) General Wage Determination reports showing prevailing wages applicable to each project throughout the construction phase.
- Final Wage Compliance Report
- Davis-Bacon communications, including:
 - Department of Labor communications
 - Letters to Contractor(s) requesting payments of restitution owed to workers and liquidated damages, including copies of letters confirming Contractor(s) compliance and / or resolution of labor-related issues.
- DOL Semi-Annual Report with all required reporting data associated with the CDBG-DR Hurricane Ike award.
- Additional documentation as required by TDHCA.

11. Relocation

The Developer / Borrower is responsible for the relocation activities related to the project. These costs may be considered eligible for reimbursement by HCDD in the project budget. The Developer / Borrower shall comply with program regulations at 24 CFR §570.606, the Uniform Relocation Assistance and Real Property Policies Act of 1970 ("URA"), as amended, at 49 CFR §24, and §104(d) of the Housing and Community Development Act of 1974, as amended, at 24 CFR §42. If applicable, Developer / Borrower shall submit to the Director copies of all documentation relating to URA, including but not limited to, a Relocation Plan with Assurance Letter, Notice to Real Property, Tenant Status Reports, and all Notices with Tenant Acknowledgments as required by the URA.

12. Project Completion and Release of Retainage Procedures

When a project is finished, the procedures listed below will be followed to document completion and allow for retainage (the last 10% of project costs) to be paid.

- Developer / Borrower submits Final Draw for Retainage. This draw is identical in form to the others and includes the final inspection report from the third party inspector indicating that the project is complete.
- Developer / Borrower completes and submits a Final Wage Compliance Report.
- Developer / Borrower submits Certificate of Occupancy for project, received from the City's Department of Public Works and Engineering, Planning and Development Services Division (<http://www.publicworks.houstontx.gov/planning/index.htm>).
- Developer / Borrower submits Updated Title Report to demonstrate that the title to project remains clear.
- Developer / Borrower submits letter certification from Architect that project meets requirements of the Americans with Disabilities Act.
- Developer / Borrower submits Certificate of Substantial Completion, and AIA form that is signed by the Owner, General Contractor, and Architect.

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- Developer / Borrower submits Lien Release from General Contractor to show that all materialmen have been paid.
- HCDD will review submittal items and, if all are in order, process a draw request.

13. Project Lease up Procedures- Tenant Selection, Income Targeting, Affirmative Marketing

HCDD will provide Initial Training on Rental Procedures to Borrower's staff within 60 days of the loan closing. This training ensures that borrowers follow all pertinent regulations when leasing their properties. Technical assistance is provided upon request to any property manager/staff following the initial training, if needed. A HCDD compliance officer is assigned to each property so that property manager/staff has a consistent point of contact for questions/clarification on program requirements. HCDD must approve each project's tenant selection policy (TSP), affirmative marketing plan, and schedule of leases & rents to ensure compliance with CDBG requirements. The tenant selection must be:

- Written and displayed at the project leasing in a common area.
- Consistent with the purpose of providing housing for families making 80% or less of AMFI.
- Reasonably related to program eligibility and Lessee's ability to perform under the lease.
- Chronological, so that tenants taken from a written waiting list are assisted in order.
- Designed to give prompt written notice of the grounds for rejection to any Lessee rejected based on income.

14. Portfolio Management Procedures

Current HCDD policy is to structure all commercial loans as zero percent interest, performance based loans, unless other program assistance requirements do not allow this.

Completed projects require annual monitoring. Utilizing both in-house and third-party expertise, HCDD coordinates and reviews the results of monitoring activities to ensure the continuing provision of safe, decent, affordable multifamily housing in compliance with all applicable regulations. Upon completion, a minimum of 51% of the units will be restricted for five years to low- to moderate-income individuals earning 80% or less of the AMFI. The rents must comply with the High HOME Rents unless the property is under an existing LURA. Monitoring includes:

1. On-site inspection provided by HCDD, City, or third-party property inspector to ensure compliance with Housing Quality Standards (HQS) under 24 CFR Sec. 982-401.
2. Compliance Standards Review (CSR) provided by technical support staff from HCDD, the City, or a third-party to ensure compliance with the CDBG Disaster Recovery NOFA for Hurricane Ike and Dolly includes, but not limited to, the following:
 - i. Affordable Rental Housing
 - ii. Subsequent Rents during the Affordability Period
 - iii. Initial and Annual Recertification of Tenant Income
 - iv. Periods of Affordability
 - v. Tenant and Participant Protection (lease term, prohibited lease terms, tenant selection policy)
 - vi. Civil Rights Act of 1964 and amendments
 - vii. Section 504 of the Rehabilitation Act of 1973

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- viii. Architectural Barriers Act and the Americans with Disabilities Act
- ix. Design and Construction requirements
- x. Benefit LMI; 51% of the units
- xi. Affirmative Marketing
- xii. National Flood Insurance Program
- xiii. Displacement, relocation, acquisition, and replacement

- **Monitoring Schedules**

Each completed project requires annual compliance monitoring. HCDD maintains the Commercial Monitoring Log, which is a division-wide tabulation of the last date of performance monitoring. HCDD ensures that all three aspects of monitoring - physical, program (CSR), and financial - take place on each project regularly. Monthly compliance reports are required of all Developers / Borrowers. These reports which document a property's occupancy and show whether an owner is in compliance with the provisions in the loan agreement will be forwarded quarterly to TDHCA.

The HQS and Compliance Monitors may jointly execute the monitoring visit. The checklists should be fully completed and should include notes for each file/document reviewed. Copies of documentation may be collected to support any findings or concerns and used as examples during the exit conference.

- **Physical Monitoring - Property Inspection Procedures**

A physical inspection will include inspection of the exteriors of all buildings and common areas, and the inspection of the interiors of a representative sample of restricted units. A representative sample consists of 10%-15% of the restricted units. The inspector will inspect broadly to ensure the project meets HQS requirements for rehabilitation or applicable new construction requirements .

- **Compliance Monitoring - Property/Program Procedures**

Four weeks before a project is due for Compliance Monitoring, a letter will be sent to the borrower scheduling the Compliance Standards Review (CSR) and providing a reminder checklist of documents that the monitor will need to perform the review on the scheduled date. The Requested Items for Program Compliance Review form is attached, and is self explanatory.

On the date of the monitoring, the CSR monitor will meet with property staff and review performance under the contract for the following topics:

1. Use and Occupancy of the Property
2. Rent
3. Administration

A selection of restricted unit tenant lease files will be randomly checked for compliance.

- **Financial Monitoring**

HCDD receives financial reports from the operating properties regularly. HCDD reviews the financial report and verifies that taxes and insurance have been paid. Debt Service Coverage will be monitored with the collection of operating statements and rent rolls. Any concerns will be reviewed by HCDD. Additional training, CSR review, or other steps may be taken to assist the borrower to continue to

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provide affordable housing. Fair Market Rents, identified by HUD, are located at <http://www.huduser.org/portal/datasets/fmr/fmrs/docsys.html&data=fmr10>.

- **Quarterly Reporting**

Quarterly compliance reports are due by the 5th of April, July, October, and January. Each property must submit the compliance reports to HCDD monthly and these reports are then transmitted to TDHCA on a quarterly basis. The report will summarize the unit status and income certification of restricted units in that particular property, as required by contract (<http://www.houstontx.gov/housing/multicompliance.html>). This site provides all compliance forms, with links to appropriate HUD sites and the latest rent and income limits applicable to CDBG - DR requirements.

15. Records Retention

HCDD maintains all its official records on programs and individual activities for a general period of 5 (five) years, as required by HUD regulations in 24 CFR 85.42 Retention and access requirements for records (<http://ecfr.gpoaccess.gov/cgi/t/text/text-idx?c=ecfr&sid=4e5d2eca5831dfbb50e86ee4f36d37b7&rgn=div8&view=text&node=24:1.1.1.1.39.3.88.18&idno=24>).

Questions about HCDD's Multifamily CDBG-DR Hurricane Ike Program can be directed to:

Linda Crosson: (713) 868-8498

Multifamily CDBG-DR Hurricane Ike Program Information line: (713) 868-8300

You can find other pertinent contact information at HCDD's website (<http://www.houstontx.gov/housing/contact.html>)